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IN THE
Supreme Court of the United States

October Term, 1942.

No. 928

**GLENS FALLS INDEMNITY COMPANY
and
JAHNCKE SERVICE, INC.,**

Petitioners,

versus

**JOSEPH H. HENDERSON, DEPUTY COMMISSIONER,
UNITED STATES EMPLOYEES' COMPENSATION
COMMISSION, SEVENTH COMPENSATION DIS-
TRICT,**

Respondent.

**PETITION FOR A WRIT OF HABEAS CORPUS TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

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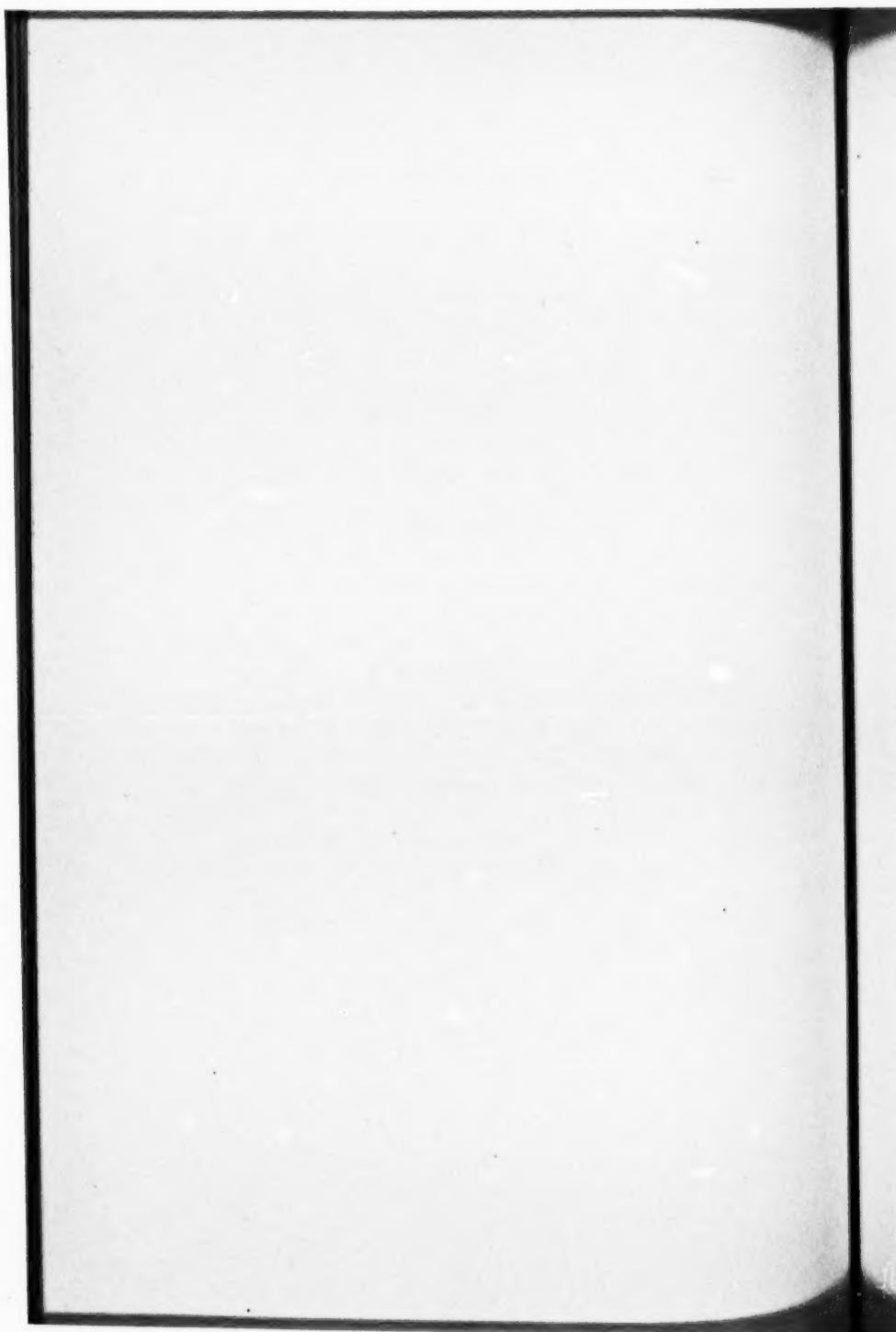
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JOSEPH H. HENDERSON, DEPUTY COMMISSIONER,
UNITED STATES EMPLOYEES' COMPENSATION
COMMISSION, SEVENTH COMPENSATION DIS-
TRICT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.

STATEMENT OF THE CASE.

John Franklin was drowned while employed on a barge owned and operated by Jahncke Service, Inc., of New Orleans, Louisiana (R. 31, 32). A claim for compensation was filed under the Longshoremen's and Harbor Workers'

Compensation Act (*Act Mar. 4, 1927, c. 509, 44 Stat. 1494 [33 USCA Sec. 901 et seq.]*) on behalf of a minor child claiming as a dependent of the deceased employee (*R. 23*).

On January 21st, 1941, the Deputy Commissioner filed an order awarding compensation to the unrepresented minor child but directing that payment be held in abeyance until the appointment of a guardian to the minor child (*R. 31-34*). A tutrix was subsequently appointed on March 17th, 1941, and on April 5th, 1941, the Deputy Commissioner filed a supplemental order directing payment of all accrued and current compensation to the tutrix (*R. 37*).

On May 5th, 1941, the employer and its insurance carrier, petitioners herein, brought suit in the United States District Court for the Eastern District of Louisiana, to enjoin and set aside the Order, Award of Compensation, as being contrary to law, pursuant to Section 21(b) of the Act (*R. 2*).

On December 27th, 1941, the District Court entered judgment setting aside the Deputy Commissioner's Order, Award of Compensation and enjoining the enforcement thereof (*R. 73-75*). Thereafter, the Civil District Court for the Parish of Orleans, State of Louisiana, in the exercise of its jurisdiction over the minor claimant and her tutrix, ordered the tutrix to abandon the minor's claim and right to appeal, and authorized her to compromise and settle the claim of the minor (*R. 78 m*). On February 10th, 1942, the tutrix through her attorney, served notice on the Deputy Commissioner of the abandonment

and withdrawal of the claim (R. 78 q). Subsequently thereto, on March 17th, 1942, the Deputy Commissioner alone, appealed from the final judgment dismissing the Order, Award of Compensation (R. 75), and in due course appellees, petitioners herein, moved to dismiss the appeal (R. 78 a).

STATUTES INVOLVED.

The statute involved is the Longshoremen's and Harbor Workers' Compensation Act (Mar. 4, 1927, c. 509 Sec. 1, et seq. 44 Stat. 1494 et seq., [33 USCA Secs. 901 et seq.]) the pertinent parts of which are more particularly set out in the appendix hereto.

QUESTIONS PRESENTED.

1.

Whether the United States Employees Compensation Commissioner may alone, in his *quasi-judicial* capacity, appeal from a final judgment of a United States District Court reversing, and enjoining the enforcement of his Order, Award of Compensation, especially in view of the fact that the claimant has not appealed therefrom, but has acquiesced in said judgment.

2.

Whether the voluntary abandonment and withdrawal by the claimant of the claim for compensation, after the Dis-

strict Court had rendered a judgment adversely to the claimant reversing the award of the Commissioner and after claimant had acquiesced therein, renders the matter so far a moot question, that the appeal taken by the Commissioner must be dismissed.

3.

Whether an Order, Award of Compensation under the Longshoremen's and Harbor Workers' Compensation Act, which has been rendered contradictorily with an unrepresented minor claimant is "in accordance with law" within the meaning of Section 21(b) of the Act or whether the presence of a properly qualified representative is required for the validity of proceedings had before the Deputy Commissioner.

RULINGS OF THE COURT BELOW.

The Circuit Court of Appeals for the Fifth Circuit held:

(1) That the Commissioner was a proper party appellant, since under the statute, he is the sole party defendant in a proceeding to review his Order, Award of Compensation (*R. 81, line 30*).

(2) That the appeal was not rendered moot by reason of the abandonment, withdrawal and settlement of the claim by claimant because, under sections 15(b) and 16 of the Act which purport to prohibit settlements, the compromise agreement was ineffective (*R. 81, line 17*).

(3) Both the District Court and the Circuit Court of Appeals failed to recognize, consider and properly adjudicate upon the question as to whether the proceedings had before the Commissioner contradictorily with an unrepresented minor, was in accordance with law.

REASONS FOR GRANTING.

(1) The Circuit Court of Appeals held that the Commissioner, as the only necessary party defendant in the injunction suit was entitled to appeal from the decision of the District Court reversing his own decisions.

So holding, the Circuit Court of Appeals has decided an important question of law which has not been, but should be settled by this Court. The decisions of the highest courts of the States of New York, Maryland, Minnesota, Pennsylvania, Wisconsin, Louisiana and other representative decisions which represent the great weight of authority hold, that *quasi-judicial* tribunals as such, are prohibited from engaging in litigation concerning the validity of their own decisions. We read the ruling of the Circuit Court of Appeals, as being in conflict with the great weight of authority on this important question of law.

(2) In holding that the question presented by the appeal had not become moot because the settlement was prohibited by the Act, the Circuit Court of Appeals has failed to consider the real question presented, namely the right of a claimant to withdraw from and abandon litigation after an adverse decision, and in so holding the Cir-

cuit Court of Appeals has decided in conflict with the doctrine announced in *Addington v. Burke*, 123 U. S. 693, 8 S. Ct. 1391, 31 L. Ed. 853 (1887); *Elwell v. Fosdic*, 134 U. S. 500, 10 S. Ct. 598, 33 L. Ed. 998 (1890); *County of Dakota v. Glidden*, 113 U. S. 222, 5 S. Ct. 428, 28 L. Ed. 981 (1885); *U. S. Consol. Seeded Raisin Co. v. Chaddock & Co.*, 173 F. 577, 97 C. C. A. 527, 19 Ann. Cas. 1054 (1909); *Mills v. Green*, 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895); *United States v. Hamburg-American Steamship Co.*, 239 U. S. 466, 36 S. Ct. 212, 60 L. Ed. 387 (1916) and other decisions cited in the argument, to the effect that a Court is not empowered to decide moot questions or abstract propositions, or to announce rules of law which cannot affect the result as to the thing in issue in the case before it.

(3) In failing to consider and properly adjudicate upon the validity of the proceedings had before the Commissioner contradictorily with a person not *sui juris*, the Fifth Circuit Court of Appeals has overlooked the applicable provisions of the Act as well as its own decision in *Maryland Casualty Co. v. Lawson*, 110 F. (2d) 269 (C. C. A. 5th, 1940) and the ruling announced by the Court of Appeals for the District of Columbia in *Hoage v. Terminal Refrigerating and Warehousing Co.*, 78 F. (2d) 1009 (1935) and other representative decisions cited in the argument, all to the effect that a minor or other incompetent, is not a party to proceedings had before a deputy commissioner unless properly represented therein. This court has not as yet decided this important question.

For the foregoing reasons, and because of the importance of the questions presented, Glens Falls Indemnity Company and Jahncke Service Inc., petitioners herein pray that a Writ of Certiorari issue to review the decree entered herein on February 10th, 1943, by the Circuit Court of Appeals for the Fifth Circuit in the above entitled cause.

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BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

The opinion of the District Court was written by District Judge Adrian J. Caillouet, and filed December 27th, 1941. It appears on page 66 of the record and is reported in 42 F. Supp. 528. The opinion of the Circuit Court of Appeals (Circuit Judges Hutcheson, Holmes and McCord, Judge Hutcheson writing) was filed February 10th, 1943, and appears at page 80 of the Record. It is reported in F. (2d)

JURISDICTION.

The jurisdiction of this court is invoked under section 240(a) of the Judicial Code as amended by the act of June 7, 1934, c. 426 (48 Stat. 926 [28 USCA Sec. 347 a]). The judgment of the Circuit Court of Appeals was entered on February 10th, 1943 (R. 85). Petition for rehearing was denied on March 12th, 1943 (R. 90). Extension of thirty days for filing petition for *certiorari* was granted by Mr. Justice Holmes on March 18th, 1943 (R. 92).

THE FACTS.

The facts are stated in the petition at page 1. We emphasize the fact that the appeal petitioners sought to

dismiss was taken by the Deputy Commissioner alone, after the claimant, by abandoning and withdrawing the claim, had acquiesced in the judgment of the District Court reversing and setting aside his order awarding compensation.

ARGUMENT.

I.

The Deputy Commissioner Had No Standing As Appellant In This Cause.

The Employees' Compensation Commission is an administrative agency created by the Act of Sept. 7, 1916, c. 458 Sec. 28 (39 Stat. 748 [5 USCA Sec. 778]) to which the administration of the Longshoremen's and Harbor Workers' Compensation Act has been intrusted. Under the Act, all claims for compensation must be filed by the party claimant with the deputy commissioner within a prescribed time and the commissioner is given full power and authority to hear and determine all questions in respect of such claims. Within ten days after the claim is filed, the deputy commissioner must give notice to all parties in interest and make such investigations with respect to the claim as he deems necessary and, upon application of any party in interest, a hearing is ordered after giving the claimant and other interested parties sufficient notice thereof. (*Sec. 19 of the Act [33 USCA Sec. 919]*).

Compensation orders become effective when filed, and unless proceedings are instituted to suspend or to set

them aside by either party, they become final within a prescribed time. (*Sec. 21 (a) [33 USCA Sec. 921 (a)]*). After the award has become final, and the employer defaults in the payment of a compensation award, the person to whom such compensation is payable may make application to the deputy commissioner for a supplementary order declaring the amount in default, but such order can only be made after investigation, notice and hearing as in the case of claims. The claimant may then file this supplementary order with the Federal District Court having jurisdiction, whereupon the court enters judgment for the amount declared in default. Review of this judgment may be had as in civil suits for damages at common law, and final proceedings to execute the same may be had by writ of execution (*Sec. 18 of the Act [33 USCA Sec. 918]*).

The act further provides that if a compensation order is not in accordance with law, it may be suspended or set aside through injunction proceedings brought by any party in interest against the deputy commissioner (*Sec. 21(b) [33 USCA Sec. 921 (b)]*).

From the foregoing, it is at once clear that the sole function of the Employees' Compensation Commission is to hear, determine and adjudge in the first instance, all matters coming within its jurisdiction, according to the proven facts and applicable law. Being of statutory origin, it needs no citation of authority to show that its powers, rights and duties are merely those which the statute has conferred upon it, and there is nothing in the Longshoremen's and Harbor Workers' Compensation Act which ex-

pressly or by necessary implication authorizes the commissioner to engage in litigation concerning the validity of its own decisions.

It is a well recognized principle of law that a court or an administrative board or agency exercising judicial or quasi-judicial functions can not interest itself in maintaining its determination and consequently can neither appeal from an order of the court reversing the proceedings nor be heard on appeal. *People ex rel Stuart v. Railroad Comm'rs.* 160 N. Y. 202, 54 N. E. 697 (1899).

This rule has been adopted in innumerable state decisions in which the question has been presented. In *Miles v. McKinney*, 174 Md. 551, 564, 199 A. 540, 546, 117 A. L. R. 207, 214 (1938) which involved the question as to the right of the Board of Zoning Appeals to appeal a judgment of the Baltimore City Court reversing its order, the Supreme Court of Maryland said:

"Since therefore the Board is not a party to this proceeding, has no interest in it different from that which any judicial or quasi judicial agency would have, which is to decide the cases coming before it fairly and impartially, is in no sense aggrieved by the decision of the Baltimore City Court and has no statutory right of appeal, it had no power to take this appeal, and the appeal must be dismissed."

In *People v. Lawrence*, 107 N. Y. 607, 609, 15 N. E. 187, 187-188 (1888) the Court of Appeals of New York said:

"The appellant is Abraham R. Lawrence, not as an individual, but in his judicial character as a justice of the Supreme Court. He was styled defendant in the

court below in that character only, and the object of the proceedings . . . was to procure a reversal of an order made by him in his judicial capacity. We are unable to discover that he had an interest in maintaining the order or that it affects any right peculiar to himself."

The Supreme Court of Minnesota, adjudicating on a similar question in the case of *Kirchoff v. Board of Comm'rs of McLeod County*, 189 Minn. 226, 227, 248 N. W. 817 (1933) held:

"The board is the tribunal designated by statute to hear the petition and pass upon it in the first instance. The litigants are the petitioner and the School districts affected. A court or tribunal before whom a controversy is litigated has as such, no appealable interest in the matter . . . Public boards and officers can not appeal or sue out writs of error, if they have no interest or are not aggrieved either in their official or individual capacity."

To the same effect are the cases of *McCarty v. Board of Supervisors*, 61 Wis. 1, 20 N. W. 654 (1884); *State v. Zoning Board of Appeal and Adjustment*, 198 La. 758, 4 So. (2d) (1941); *Pennsylvania Labor Relations Board v. Heinel Motors*, 344 Pa. 238, 25 A. (2d) 306 (1942).

In the last mentioned case the Supreme Court of Pennsylvania said:

(344 Pa. 239, 25 A. (2d) 307): "Such a tribunal * * * quasi-judicial in character, intended to be impartial, given the power to hear and initially determine and adjudge, should not be able to convert itself into a litigant and become the partisan advocate

of one or the other of the parties whose cause it has heard. This would tend to destroy its quasi judicial character and its impartiality. Furthermore, to convert it into a party litigant would be to run counter to Pennsylvania's customs and traditions. Since Penn's frame of government for the commonwealth first established government by written limitations * * * it has been fundamental with us that judicial tribunals and quasi-judicial ones should be limited to hear and decide, not to espouse any party's cause at any state of proceedings. For the Board to become a litigant is repugnant to the traditional common law heritage of judicial detachment and freedom from interest."

We admit there are some administrative agencies, such as the Federal Trade Commission and the National Labor Relations Board, the functions of which are to execute some definite policy of Government, as the representative of the people. Consequently, they are not only permitted to participate in litigation affecting their own decisions, but are expressly required to do so as necessary and essential to the adequate protection of the interests of the government. In such cases Congress has, in unmistakable language, conferred upon these agencies the rights and duties of taking part in such litigation. Thus Section 5 of the Federal Trade Commission Act provides:

"The commission is hereby empowered and directed to prevent persons * * * from using unfair methods of competition * * *" (15 USCA Sec. 45 (a).)

"Whenever the Commission shall have reason to believe that any person * * * is using any unfair method * * * and if it shall appear to the commission that a proceeding by it in respect thereof would be

to the interest of the public, it shall issue and serve upon such person a complaint stating its charges * * * (15 USCA Sec. 45 (b)).

Speaking of this section, the late Justice Brandeis said:

"Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the commission's name; the prosecution is wholly that of the government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the commission a complaint against the alleged wrongdoer. Nor may the commission authorize him to do so. He may of course bring the matter to the commission's attention and request it to file a complaint. But a denial of his request is final * * *" *Federal Trade Commission v. Klesner*, 280 U. S. 19, 25, 50 S. Ct. 1, 3, 74 L. Ed. 138 (1929).

Again, in *Amalgamated Utility Workers v. Consol. Edison Co.*, 309 U. S. 261, 265, 60 S. Ct. 561, 563, 84 L. Ed. 738 (1940) this Court discussed similar provisions in the National Labor Relations Act as follows:

"It is apparent that Congress has entrusted to the board exclusively the prosecution of the proceeding by its own complaint, the conduct of the hearing the adjudication and the granting of appropriate relief. The board as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce."

These boards exercise, therefore, the functions of both prosecutor and judge. *Federal Trade Commission v. Klesner, supra*. Such features, however, are conspicuously absent in the Longshoremen's and Harbor Workers' Compensation Act, and it is submitted that the enforcement of its provisions is not of such nature and does not embody such a public policy as would impliedly authorize the Commission to participate in litigation concerning the rights of private individuals. To permit the commissioner to appeal in this case would violate principles which have been long established by the courts of this country.

The Circuit Court of Appeals for the Fifth Circuit held that the commissioner, having been made a party defendant in the court below, had a right to take this appeal, and in support of this proposition cited and relied upon *Didier v. Crescent Wharf and Warehouse Company et al.*, 15 F. Supp. 91 (D. C. Cal., 1936), in which the District Court of California held the commissioner was the necessary party defendant against whom an action to review his order under section 21(b) of the Act must be instituted. But it does not follow that because the commissioner is made a party defendant in the District Court he has a right to appeal from a judgment reversing his award. The answer lies in the fact that Section 21(b) of the Act merely prescribes a mode of procedure to review the orders and awards of compensation made by the deputy commissioner at the proceedings had before him, which is more in the nature of an appeal, and the mere fact Section 21(a) of the act requires the United States attorney to represent the Commission or its deputy commissioner "when either is a party to the case or interested, and to

represent such commission or deputy in any court in which such case may be carried on appeal" (33 USCA Sec. 921(a)) does not, as stated by the Fifth Circuit Court of Appeals, necessarily mean that the commissioner shall be entitled to prosecute an appeal on his own motion from a judgment reversing his own decision. But it is perfectly consistent with the wording of this section of the Act, that the commissioner shall be represented by the United States attorney when, and in those instances in which, he is a party defendant under the provisions of section 21(b) of the Act (33 USCA Sec. 921(b)), or when the cause is carried to an appellate court either by the original claimant or by the employer or its insurance carrier.

We fail to see wherein the commissioner has been aggrieved by the judgment of the District Court either personally or in his judicial capacity. His interest in the proceedings is certainly not of a pecuniary nature; he stands to lose absolutely nothing; hence he is neither injured or benefited by the judgment appealed from. Furthermore, the claimant herein is not appealing. The appeal has been taken by the deputy commissioner in *sua persona*, not as an individual but in his judicial capacity, with the sole object of procuring a reversal of the judgment which, as far as it affects the claimant, has become final and binding.

Under the elementary principle of procedural law that no one can be permitted to appeal from a judgment unless he has a real, substantial and immediate interest in the subject matter of the litigation and that the right or title which the appellant seeks to establish must be his own

and not that of a third person, it is respectfully submitted that the appeal should have been dismissed.

II.

Question Raised by Appeal Was Moot.

This Court has consistently recognized that an appeal will not be entertained if it is shown that its only purpose is to secure a decision upon abstract questions of law. Thus, in *California v. San Pablo and T. R. Co.*, 149 U. S. 308, 314, 13 S. Ct. 876, 878, 37 L. Ed. 747 (1893), it was said:

"The duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it. When in determining such rights it becomes necessary to give an opinion upon a question of law, that opinion may have precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which can not affect the result as to the thing in issue in the case before it."

This rule has been consistently applied by this Court in innumerable instances and under diverse circumstances. Thus, in *Mills v. Green*, 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895) an appeal from a decree dismissing an action to secure a right to vote at an election, was dismissed on motion showing that the election had already taken place. Similarly, in *Wingert v. First National Bank* 223 U. S. 670, 32 S. Ct. 391, 56 L. Ed. 605 (1912) an appeal from a judgment refusing an injunction to prohibit the

defendant from erecting a new bank building, was dismissed upon a showing that the new structure had been completed in the interim.

In *United States v. Hamburg-American S. S. Company*, 239 U. S. 466, 36 S. Ct. 212, 60 L. Ed. 387 (1916), a combination of American and German steamship lines was attacked as illegal under the antitrust act of 1890. In dismissing an appeal by the plaintiff, the court held that since the business in which the parties to the combination were engaged had terminated in the interim, and that since any continued relation between them was unlawful owing to the World War, all questions respecting the validity of the combination had become moot and beyond the power of the court to determine.

Under these principles, it is now established that an appeal will be dismissed upon a showing that the appeal has been withdrawn, or that the right to appeal has been abandoned, or where it is shown that the parties have entered into a stipulation, based upon sufficient consideration, that no appeal shall be taken from the decree of the trial court. *Addington v. Burke*, 125 U. S. 693, 8 S. Ct. 1391, 31 L. Ed. 853 (1887); *Elwell v. Fosdic*, 134 U. S. 500, 10 S. Ct. 598, 33 L. Ed. 998 (1890); *County of Dakota v. Glidden*, 113 U. S. 222, 5 S. Ct. 428, 28 L. Ed. 981 (1885); *U. S. Consol. Seeded Raisin Co. v. Chaddock & Co.*, 173 F. 577, 97 C. C. A. 527, 19 Ann. Cas. 1054 (1909). And the mere fact the questions involved are of great importance and identical with those presented in other cases, is not an inducement to the court to take cognizance of the ap-

peal. As was said by this Court in *Little v. Bowers*, 134 U. S. 547, 558, 10 S. Ct. 620, 623, 33 L. Ed. 1016 (1890):

"If as is contended on behalf of the plaintiff in error, the question involved in this case is one of great importance to the railroad company and to the state, and is identical with that in a number of other cases pending in the court below, so much more important is it that it should not be decided in a case where there is nothing in dispute."

The Circuit Court of Appeals held, however, that the withdrawal and abandonment of the claim by the claimant did not render the question moot because the compromise agreement was illegal under the provisions of Sections 15(b) and 16 of the Act. (33 USCA Secs. 915(b), 916). But the question before the Court was not the validity *vel non* of the compromise agreement. This question may have arisen in the event the claimant had appealed from the judgment sought to be reversed. By not appealing, and by electing to withdraw from the litigation and abide by the judgment of the District Court, claimant is bound thereby. *Hartford Accident & Indemnity Co., v. Bunn*, 285 U. S. 169, 52 S. Ct. 354, 76 L. Ed. 685 (1932). Moreover, the reversal of the judgment could not possibly have inured to the benefit of the claimant since a reversal on appeal benefits only those who have appealed. *Hartford Accident & Indemnity Co. v. Bunn*, *supra*.

It follows, therefore, that the question as to the validity *vel non* of the compromise agreement was likewise academic and not before the Court for determination. It is clear that sections 15(b) and 16 were enacted solely for the benefit of claimants and consequently, the validity of

the compromise can be adjudicated upon at such time as, and only in the event that the claimant herein seeks to question its validity. This will clearly appear from the authorities cited by the Circuit Court of Appeals in support of its decision, namely, *Lumber Mutual Insurance Co. v. Locke* 60 F. (2d) 35 (C. C. A. 2d. 1932); *Great Lakes Dredge and Dock Company v. Brown*, 47 F. (2d) 265 (D. C. Ill., 1930); *Southern Steamship Company v. Sheppeard*, 34 F. (2d) 959 (D. C. Tex., 1929).

In *Lumber Mutual Insurance Co. v. Locke*, *supra*, the claimant had made a "full settlement of all past, present and future claims". Thereafter he repudiated his compromise and instituted proceedings for compensation. The employer's defense that the action was barred by the settlement was properly held insufficient in view of Section 16 of the Act. A similar situation was presented in the *Great Lakes Company* case, *supra*. But it must be noted, that in these cases, the claimant himself was seeking to avoid the compromise. In *Southern Steamship Company v. Sheppeard*, *supra*, an employer sued to enjoin an award made by the commissioner on the grounds that a compromise had been previously effected between the employer and the claimant. The proceedings had been instituted by the commissioner of his own motion, and the claimant was in no wise interested in a further award, as is the case here. The question presented was whether or not Section 16 of the Act which declared the release and compromise null was constitutional. The Court held:

(34 F. (2d) 961): "I am of the opinion that the matter is not before me to decide, for here is a proceeding initiated by the Commissioner sua sponte to

which Cummings is, as far as the record shows, a mere bystanding party, having no interest in the outcome, and himself in no manner bringing or prosecuting the claim. Under the undisputed facts, the agreement aside, there is no error whatever in the action of the commissioner and his award under the statute, being wholly in accordance with law, cannot in this proceeding be enjoined, whatever may be the law as to whether plaintiff under different pleadings and in a different form of action could obtain relief against the award in the event the beneficiary of it should seek to enforce it. In short * * * until the plaintiff (sic. claimant) seeks to proceed under the award or to claim the benefits of it, the question of whether it is valid and enforceable will not arise
* * *

"The present pleading showing no effort on the part of the employee to obtain or enforce the award, the QUESTION IS ACADEMIC AS TO WHETHER THE EXISTENCE OF THE AGREEMENT WOULD PREVENT ITS COLLECTION IF HE TRIED TO DO SO." (Emphasis and parenthesis supplied.)

The mere possibility that the claimant in this case will seek to enforce the award of the commissioner thus bringing up for consideration the validity of the agreement, does not alter the situation. In *United States v. Hamburg-American S. S. Co.*, *supra* it was contended that in view of the possibility that on the cessation of war between the United States and Germany, the parties to the alleged illegal combination would resume their activities, and that, therefore, the court should decide the controversy to prevent future attempts at a renewal of the combination. This suggestion was flatly rejected, the court stating:

"But this, merely upon a prophecy as to future conditions, invokes the exercise of judicial power not to

decide an existing controversy, but to establish a rule for controlling predicted future conduct, contrary to the elementary principle * * * stated in *California v. San Pablo T. R. Co.*"

United States v. Hamburg-American S. S. Co., 239 U. S. 466, 475, 36 S. Ct. 212, 216, 60 L. Ed. 387 (1916).

See also, *Goodyear Tire & Rubber Co. v. Federal Trade Commission*, 92 F. (2d) 677 (Reversed on other grounds, 304 U. S. 257, 58 S. Ct. 863, 82 L. Ed. 1326 (1938).)

It is, therefore, respectfully submitted, that the questions presented by the appeal had become moot since this was a proceeding initiated by the Commissioner himself, to which the real party to the original suit was a mere bystander having no additional interest whatever in the outcome of the case, as is shown by the record, and who was in no way further prosecuting the claim, In short, there was nothing before the Court for adjudication, and since a reversal of the judgment would have been of no effect, the appeal should have been dismissed.

III.

The Order Was Invalid Because Rendered Contradictorily With An Unrepresented Minor.

Section 19 of the Statute provides that an order may be made only after hearings had contradictorily with all parties in interest, (33 USCA Sec. 919). Section 21(b) provides that a compensation order may be suspended or set aside "if not in accordance with law." (33 USCA Sec. 921(b).) It follows, therefore that an order rendered

in favor of or against a person not legally before the commissioner is not "in accordance with law" and may be set aside or suspended.

The record shows the award herein complained of grew out of a proceeding had contradictorily with an unrepresented minor. In other words, the deputy commissioner proceeded to determine petitioner's liability for compensation contradictorily with said minor as though she was a person "*sui juris*", contrary to law. In support of his action the commissioner relied on section 9(b) of the Act, his contention being that it is discretionary with him to require the appointment of a guardian. This section, as well as section 8(d) of the Act, merely state the *quantum* which shall be paid and does not purport to provide the procedure to be followed at hearings before the commissioner. It is true that both sections authorize the commissioner and make it discretionary with him to appoint a guardian for a minor; but this only for the purpose of receiving the compensation to which the minor may be entitled thereunder. This is clear from a careful reading of these sections which we quote merely for the convenience of the Court.

"Any compensation (for disability) to which any claimant would be entitled * * * shall * * * be payable to and for the benefit of the persons following:

* * * *

"If there be a surviving wife or dependent husband *and surviving children* of the deceased * * * one-half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

"The Deputy Commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child." (33 USCA Sec. 908 (d).)

Likewise, section 9 (b) merely states that in case the injury causes death, compensation shall be payable to the surviving wife and surviving child or children, if any, in which case, the commissioner may also require the appointment of a guardian for the purpose of receiving the compensation of minor children. (33 USCA Sec. 909(b).) It is clear therefore that the purpose for the requirement that a tutor be appointed, is merely for receiving the compensation to which under the act, a minor might be entitled, but *ONLY AFTER AN AWARD HAS BEEN MADE ACCORDING TO LAW AND CONTRADICTORILY WITH ALL PARTIES IN INTEREST.*

It is significant that under section 9 (c) which provides for the *quantum* to be paid to minor children in default of a surviving spouse, nothing is said regarding the appointment of a guardian or tutor, the inference being that a tutor will already have been appointed to represent the minor at the hearings (33 USCA Sec. 909 (c)). It may well be argued, therefore, that the sections which do authorize the commissioner to appoint a guardian in his discretion are intended to apply only to a case wherein an award has been made contradictorily with the surviving parent and in which proceeding a certain percentage of the award is payable to a minor child either personally, or through a guardian appointed for that purpose.

There is nothing in the Longshoremen's and Harbor Workers' Compensation Act authorizing the commissioner to hold hearings contradictorily with persons who are not *sui juris*. On the contrary, it is impliedly stated in section 13 (c) that the appointment of a representative to minors and incompetents is a prerequisite to the validity of an order. This section provides:

"If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subdivision (a) (providing for the time within which claims must be filed) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age." (33 USCA Sec. 913 (c)).

Applying the above quoted section to the question as to whether a minor's right to claim compensation was barred by the failure of his mother to file the claim within the time prescribed by law, the Fifth Circuit Court of Appeals held that since the minor had not an authorized representative capable of representing his rights in the premises, the action was not prescribed. *Maryland Casualty Company v. Lawson*, 110 F. (2d) 269, 270 (C. C. A. 5th, 1940). The Court said:

"Section 13 (913) in speaking of the absence of 'a guardian or other authorized person' does not contemplate the recognition or authority which proceeds from the Deputy Commissioner, but that authority

which the law of the claimant's domicile or of the place of the occurrence of the compensable injury vests in some person as the guardian or like representative of the minor or incompetent. The compensation is a property right, generally to be used in the support of the dependent claimant, and someone authorized by law to collect and expend it is contemplated * * * The minor must, before being barred, for a year have had an authorized and responsible representative capable of and bound to represent his rights in the premises."

A similar question was decided in *Hoage v. Terminal Refrigerating and Warehousing Co.*, 78 F. (2d) 1009 (1935) in which the Court of Appeals for the District of Columbia held that a suit to enjoin an award in favor of an incompetent on the grounds that his claim had been previously rejected was not *res judicata*, since the minor had not been represented at the prior hearings. The Court said:

(72 F. (2d) p. 1011): "It appears that from the time of his injury up to the time of the appointment of his present committee the employee was not represented in these proceedings by any guardian or other representative. Therefore, in contemplation of law, the employee if mentally incompetent was not a party in the proceedings had under the respective claims for compensation filed with the Deputy Commissioner in his name * * *

"If the employee was non compos mentis at the time when these (proceedings) were had and the rejections were made, and was not represented by a guardian or other representative the rejections would not have the effect of a lawful adjudication of the rights of the employee."

If, therefore, a minor or an incompetent is not a party to the proceedings and a lawful adjudication of his rights can not be made unless he is properly represented, it follows that an order, whether rejecting or allowing his claim, is not in accordance with law. See also *Weyerhaeuser Timber Co. v. Marshall*, 102 F. (2d) 78 (C. C. A. 9th, 1939) wherein a guardian *ad litem* to the minor was appointed to represent the minor at the hearings before the commissioner.

Under the New York Workmen's Compensation Law, as set out in McKinney's Consolidated Laws, Secs. 28 and 115, from which the above quoted sections of the Longshoremen's Act were taken, it is held that it is the guardian or next of friend of minors or incompetents who must file the claims for compensation. *Grillo v. Sherman-Stalter Co.*, 195 App. Div. 302, 186 N. Y. S. 810 (1921). See also *Decker v. Pouvaillsmith Corporation*, 252 N. Y. 1, 168 N. E. 442 (1929); *Hanke v. N. Y. Consolidated R. Co.*, 181 App. Div. 53, 168 N. Y. S. 234 (1917). The Supreme Court of Illinois, in a case involving the procedure before the Industrial Commission of that state for compensation of a minor arising out of the death of his father, correctly held that a minor could not commence or engage in a legal proceeding in his own name, but must appeal, if at all, by a representative such as a guardian or next of friend. *Waechter v. Industrial Commission*, 367 Ill., 256, 11 N. E. (2d) 378 (1937).

Under the law of Louisiana, minors do not have sufficient capacity to sue, and any action brought to enforce a right belonging to a minor not emancipated, must be in-

stituted by the representative designated by law to administer his estate, the proper party plaintiff being the representative and not the party represented. (*Arts. 108, 109, La. Code of Practice of 1870.*)

It is respectfully submitted, therefore, and we urge this court to hold, that the existence of a properly qualified representative for the claimant herein was impliedly required, if not expressly so, and that, therefore, the proceedings had before the commissioner were "not in accordance with law".

SUMMARY OF ARGUMENT.

In the foregoing we have shown that the Deputy Commissioner was not a proper party appellant in this case. We base our position on the principles, long established by jurisprudence, that administrative bodies, such as the United States Employees' Compensation Commission, are prohibited from engaging in litigation concerning their own decisions, and consequently have no right of appeal therefrom, in the absence of specific statutory authority.

We have also shown, that the question had become moot by reason of the claimant's withdrawal and abandonment of her claim and that consequently, there was nothing before the court for adjudication.

We have also shown the Order, Award of Compensation rendered by the Deputy Commissioner was contrary to law as having been rendered contradictorily with an unrepresentative.

sented minor. The decision of the Circuit Court of Appeals herein is not only contrary to the law, as announced by this Court, but also contrary to the sound principles of established jurisprudence in this country.

That the questions which this application suggests should be definitely settled by this Court is apparent.

Respectfully submitted.

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APPENDIX.

Applicable sections of the Longshoremen's and Harbor Workers' Compensation Act. (Mar. 4, 1927, c. 509, 44 Stat. 1494 [33 USCA Secs. 901 et seq.])

Sec. 8(d). "Any Compensation (for disability) to which any claimant would be entitled * * * shall, notwithstanding death arising from other causes other than the injury, be payable to * * * the persons following:

* * *

(2) If there be a surviving wife or dependent husband and surviving child or children of the deceased under the age of eighteen years, one half shall be payable to the surviving wife * * * and the other half to the surviving child * * *

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child * * *"
(33 USCA Sec. 908 (d)).

Sec. 9(b-c). "If the injury causes death, the compensation * * * shall be payable * * * to * * * the persons following:

* * *

"(b) If there be a surviving wife * * * and no children of the deceased, to such wife * * * and if there be a surviving child or children of the deceased, the additional amount of 10 per centum * * * for each such child * * * The deputy commissioner having jurisdiction * * * may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child * * *"
(33 USCA Sec. 909 (b)).

"(c) If there be a surviving child or children of the deceased, but no surviving wife * * * then for the support of each such child 15 per centum of the wages of the deceased * * *"
(33 USCA Sec. 909 (c)).

Sec. 13(c). "If a person who is entitled to compensation * * * is mentally incompetent or a minor, the provisions of subdivision (a) (providing for the time within which claims must be filed) shall not be applicable so long as such person has no guardian or other authorized representative * * *" (33 USCA Sec. 913 (c)).

Sec. 15(b). "No agreement by an employee to waive his right to compensation under this chapter shall be valid." (33 USCA Sec. 915 (b)).

Sec. 16. "No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors * * *" (33 USCA Sec. 916).

Sec. 18. "In case of default by the employer in the payment of compensation due under any award * * * the person to whom such compensation is payable may, * * * make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. * * * Such supplementary order * * * shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default * * * if such supplementary order is in accordance with law. * * *" (33 USCA Sec. 918).

Sec. 19 (a-d). "(a) * * * a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed * * *

(b) Within ten days after such claim is filed the deputy commissioner * * * shall notify the employer and any other person, whom the deputy commissioner considers an interested party, that a claim has been filed.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in

respect to the claim, and upon application of any interested party shall order a hearing thereon. * * *

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim * * *

Sec. 21 (a-b). "(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19 * * * and unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred * * *

Art. 108, La. Code of Practice of 1870. "Minors, persons interdicted or absent, can not sue, except through the intervention or with the assistance of their tutors or curators."

Art. 109, La. Code of Practice of 1870. "Tutors act themselves in all judicial proceedings, in the name of their minors, and in all suits which may be brought for them, without making them parties to said suits.

The curators of persons, interdicted or absent, act judicially in the name of those they represent, in the same manner as tutors of minors."





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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 928

GLEN FALLS INDEMNITY COMPANY AND JAHNCKE
SERVICE, INC., PETITIONERS

v.

JOSEPH H. HENDERSON, DEPUTY COMMISSIONER,
UNITED STATES EMPLOYEES' COMPENSATION COM-
MISSION, SEVENTH COMPENSATION DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 80-83) is not yet officially reported. The opinion of the United States District Court for the Eastern District of Louisiana (R. 66-72) is reported in 42 F. Supp. 528.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Fifth Circuit was

(1)

entered February 10, 1943 (R. 84), and a rehearing was denied on March 12, 1943 (R. 89). The petition for a writ of certiorari was filed on April 15, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, a deputy commissioner has standing to appeal *sua sponte* from a judgment of a United States District Court setting aside a compensation order issued by him, notwithstanding the omission or refusal of the beneficiary of the order to appeal.

2. Whether, under the provisions of that Act, such an appeal by a deputy commissioner is rendered moot either by a settlement, negotiated without his approval, between the beneficiary of the compensation order and the employer, or by the beneficiary's purported withdrawal of the claim from the deputy commissioner, without the latter's authorization.

3. Whether, under the provisions of the Act, a deputy commissioner may, in his discretion, adjudicate the claim of a minor for whom no guardian has been appointed.

STATUTES INVOLVED

The relevant provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat.

1424, as amended (33 U. S. C., § 901 *et seq.*) are set forth in Appendix A, pp. 20-34, *infra*.

STATEMENT

On May 11, 1940, in the course of his employment as a bargeman by petitioner Jahneke Service, Inc., John Franklin was drowned in navigable waters of the United States when he accidentally fell from a barge tied to a landing in the Port of New Orleans, Louisiana (R. 27-29; 31-32). On September 12, 1940, Ethel Franklin, representing herself as deceased's widow, filed a claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act (the "Act") with respondent, the Deputy Commissioner for the United States Employees' Compensation Commission at New Orleans, on behalf of Hilda Crossley Franklin, a ten-year-old child (the "minor"). The claim recited the fact of deceased's death, stated his average weekly wage at the time as \$8.19, and alleged that he stood *in loco parentis* to the minor for at least one year prior to his death. (R. 23-25.) On September 19, 1940, petitioner Jahneke Service, Inc., and petitioner Glens Falls Indemnity Co., its insurer under the Act, filed an answer to the claim with respondent, admitting that the "injury" occurred in the course of the deceased's employment, that deceased's average wage was \$8.19 weekly, *that both the deceased and the employer were subject to the Act at the time of the "injury,"* and that the deceased stood *in loco*

parentis to the minor for at least one year prior to his "injury" within the meaning of the Act (R. 27-29).

On January 21, 1941, respondent found the facts substantially as stated in the claim and admitted in the answer and filed a Compensation Order awarding death benefits to the minor in the amount of \$1.80 weekly (R. 31-34). The order recited that no hearing had been "applied for by any interested party or considered necessary * * *, the claim * * * having been accepted * * * without controversy" (R. 31).

Finding that the minor was residing with a second cousin, respondent, pursuant to Section 9 (b) of the Act, required the appointment of a guardian for the purpose of receiving the compensation awarded her, and directed petitioners to withhold payments of compensation until the issuance by respondent of "further orders * * * in the matter" (R. 33, 34).

On March 17, 1941, Ethel Franklin (hereafter referred to as "Tutrix") was confirmed as *dative tutrix* of the child in the Civil District Court for the parish of Orleans, Louisiana (R. 37). On April 5, 1941, respondent issued a "Supplemental Order" directing that all compensation due to the claimant, "in accordance * * * with the * * * Compensation Order * * * dated January 21, 1941" be paid to Ethel Franklin, as her *dative tutrix* (R. 36-38).

On May 5, 1941, petitioners, invoking Section 22 of the Act, applied to the respondent for a review of the "Compensation Orders and Awards of Compensation rendered herein", alleging error in respondent's "determination of the facts" in that he conducted the proceeding in the name of a minor prior to the appointment of a qualified tutor and in that his findings showed that deceased was a member of the crew of a vessel and, accordingly, that the Commission was without jurisdiction under the Act (R. 19-20).¹ The application also declared that petitioners had "determined" this to be so subsequent to the rendition of the compensation orders of January 21 and April 5, 1941, but recited no supporting facts (R. 20).² On May 7, 1941, this application was rejected by respondent (R. 43-44).

On May 5, 1941, the same date on which they filed their application for review with respondent,

¹ Under Section 3 (a) (1), the Act is inapplicable to the master or member of a crew of a vessel.

² On April 12, 1941, about one month before the application for review, petitioner Glens Falls Indemnity Co. had filed with respondent a "Supplemental Answer" in the matter, which, *inter alia*, reiterated the admission in the original answer that the deceased and his employer were both subject to the Act at the time of the injury, but, with apparent inconsistency, controverted the claimant's right to compensation "on the ground that the rights of the claimants, if any, are within the admiralty jurisdiction exclusively, and the Commission is without jurisdiction '*ratione materiae*' to further proceed in this cause" (R. 46-48). This was also barren of any factual recital.

petitioners filed a complaint in the United States District Court for the Eastern District of Louisiana, praying that the compensation order and award be set aside and for the issuance of interlocutory and permanent injunctions restraining respondent from enforcing them, or, alternatively, that respondent be ordered to review the award (R. 2, 10-11). In support of the complaint, it was alleged that the thirty-day time limitation, prescribed in Section 21 of the Act for the institution of court proceedings to review a compensation order, ran from April 5, 1941, the date of respondent's supplemental order; that respondent conducted the proceeding in the name of a minor claimant, without capacity, and prior to the appointment of a qualified tutor; that the deceased was a member of the crew of a vessel at the time of his death, so that the Act was inapplicable to the proceeding and respondent was without jurisdiction to make an award; that timely application for a review of the order, pursuant to Section 22 of the Act, was made to respondent, and that "the oral request" for such a review was arbitrarily denied by respondent on the ground that he lacked authority to grant it (R. 5-10).

After answers had been filed by respondent (R. 48-56) and jointly by Tutrix and the minor (R. 57-64),² and also motions to dismiss on the

² Respondent answered that the only "compensation order" in the matter, as defined in Section 19 (e)—i. e., "rejecting the claim or making the award"—was the order of January 21,

grounds that the complaint was not timely and failed to state a cause of action (R. 21, 57), the district court, on December 27, 1941, entered a judgment denying the motion to dismiss, vacating the compensation order and award and permanently enjoining respondent from enforcing the same (R. 73-75). The court concluded that respondent's order on its face "reasonably" established that deceased was a member of the crew of a vessel, and, accordingly, that the Act did not apply (R. 66-72).

Thereafter, on February 9, 1942, the Tutrix, through her attorney, filed a petition in the state court in which the tutorship proceeding was pending, praying for authority, as Tutrix, to settle the minor's claim against petitioners here for \$375.00, to withdraw the minor's claim before respondent and to abandon her right to appeal to the United States Circuit Court of Appeals (R. 78E-78K). After describing the proceedings before respondent

1941; that the thirty-day time limitation for the institution of proceedings to set aside "a compensation order" (§ 21 (a) and (b)) was not tolled by the "purely administrative instructions" contained in the Order of April 5, 1941, so that the complaint was not timely; that he was authorized under the Act to adjudicate the rights of the minor in advance of the appointment of a guardian; and that since petitioners raised no issue prior to the filing of the compensation order as to whether the deceased was a crew member and submitted no evidence on this question in support of its application for review of the order, respondent acted within his discretion in rejecting the application. The answer of the Tutrix and minor was to the same effect.

ent and the United States District Court, this recited that subsequent to the entry of the judgment of the latter court, petitioners here had approached Tutrix's counsel and offered \$400.00 in full settlement of the claims of both the minor and the Tutrix, as widow—\$375.00 for the minor, representing approximately 40 percent of the total sum she would receive under respondent's award, and \$25.00 for the Tutrix "individually";⁴ and recited further that Tutrix was of the opinion that reversal of the judgment of the United States District Court was "very doubtful," there being "substantial evidence" to sustain its findings (R. 78E-78I).

The Tutrix also prayed the court to fix the fees of her attorney for services rendered on behalf of the minor before respondent and in the United States District Court, and to authorize payment of such fee and court costs from the proceeds of the settlement (R. 78K).

On the same day that the petition was filed, the state court authorized and ordered the Tutrix to settle the minor's claim for \$375.00, to withdraw the compensation claim from respondent, to abandon the minor's right to appeal from the judg-

⁴ In their original answer to the claim, filed with respondent on September 19, 1940, petitioners denied that Tutrix was the widow of the deceased (R. 28). The record does not show whether Tutrix ever pressed a compensation claim on her own behalf.

ment of the United States District Court, and to pay from the proceeds of the settlement "all Court costs heretofore expended * * * due, and to become due" and a counsel fee of \$125.00 (R. 78M-78O).

On the next day, respondent was notified in writing of the withdrawal of the minor's claim (R. 78P-78Q).

On March 17, 1942, respondent filed notice of appeal to the Circuit Court of Appeals from the judgment entered against him by the United States District Court (R. 75-76). On June 23, 1942, petitioners moved to dismiss the appeal, urging first that the question raised was moot because of the alleged settlement and withdrawal of the claim, under authority of the Civil District Court for the Parish of Orleans, Louisiana; and, alternatively, that respondent, not being "an aggrieved party-litigant * * * injuriously affected by the judgment of the * * * District Court * * *" had no independent standing to prosecute the appeal (R. 78A-78D).

The Circuit Court of Appeals denied the motion to dismiss the appeal. It held that the appeal was not moot in view of the prohibition against settlements contained in Sections 15 (b) and 16 of the Act, and that to deny the right of appeal to respondent, the only necessary party under the statute, would be "absurd" (R. 80-81). On the merits of the case it reversed the district court's

ruling on the question of coverage, holding that a "bargeman" may or may not be covered by the Act, depending upon the particular facts, and that respondent's award was supported by petitioners' admissions in their pleadings that the Act was applicable (R. 81-83).

ARGUMENT

1. Although raising no question concerning the correctness of the decision below on the merits (Pet. 3-5), petitioners contend that respondent had no standing to appeal from the judgment of the district court setting aside his order in the absence of a concurrent appeal by the claimant, "because he is neither injured or benefited by the judgment appealed from" (Pet. 16). The untenability of this contention is apparent from the express language of the Act. Under Section 21 (b), *infra*, p. 29, suits to set aside compensation orders are required to be brought against "the deputy commissioner making the order". The deputy commissioner is thus a necessary, and indeed the only necessary, party to a proceeding like the instant one to review such an order. *Didier v. Crescent Wharf & Warehouse Co.*, 15 F. Supp. 91, 93 (S. D. Cal.). And by Section 21a of the Act, *infra*, pp. 30-31, the appropriate United States Attorney is commanded to appear on behalf of the Commission or deputy commissioner "in any court proceeding under Section 21 or other provisions of this Act * * * when either is a party to the

case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal." In the face of these provisions, obviously contemplating full participation by the deputy commissioners in litigation arising under the Act, there can be no doubt of respondent's standing to appeal in the case at bar. The deputy commissioner being a necessary party, the existence of a tangible interest on his part in the outcome of the litigation is not necessary to enable him to "follow the litigation through all courts that are given jurisdiction of the case". Cf. *United States v. Conway*, 175 U. S. 60, 69.

The recognition below of respondent's capacity to appeal *sua sponte* is in harmony with the clearly indicated Congressional purpose to charge the deputy commissioners with independent responsibility for effectuating the purposes of the Act, irrespective of the conduct of the tangibly interested parties. For example, Sections 8 (i), *infra*, p. 22, and 14 (j), *infra*, p. 26, require the deputy commissioner's approval of settlements negotiated between claimants and employers; Section 21 (c) provides that where an employer "fails to comply with a compensation order making an award, * * * any beneficiary of such award or the deputy commissioner making the order"⁵ may apply to the courts for its enforcement; and under Section 22, within one year after final payment of compensation or the rejection of a claim, the dep-

⁵ Emphasis supplied.

uty commissioner may "upon his own initiative", as well as upon the application of an interested party, reopen a proceeding on grounds of changed conditions or mistake in his determination of the facts, and enter an amendatory or wholly new order. Indeed, a conclusion contrary to that reached below would nullify the safeguards in Sections 8 (i) and 14 (j) against ill-advised settlements by claimants. For if the deputy commissioner's standing to appeal from an adverse court order were denied, the carefully designed plan to prevent the Act's beneficiaries from frittering away their rights by misguided settlements (see p. 13, *infra*) would be ineffectual whenever an award was set aside by the court of the first review.*

2 (a). Respondent's appeal to the court below was not made moot either by the purported settle-

* Besides making the deputy commissioner a necessary party to a proceeding to review a compensation order (Sec. 21 (b)), Congress has expressly recognized the interest of the deputy commissioner in litigation arising under the Act. The mandate of Section 21a, that the United States Attorney shall represent deputy commissioners in such litigation, is not limited to cases in which they are parties, but applies also to cases in which the deputy commissioners are "interested." Since this cannot contemplate a tangible interest (*cf.* Section 40 (f)), it can only mean an interest in the proper and effective administration of the Act. Such an interest can hardly be denied recognition in a case in which the deputy commissioner is the only necessary party and which concerns the validity of an order issued by him in his official administrative capacity.

ment between petitioners and the Tutrix, as the minor's representative, or by the attempted withdrawal of the minor's compensation claim from respondent and the United States Employees' Compensation Commission. Section 16 of the Act expressly provides that "no assignment, release, or commutation of compensation or benefits due or payable under this Act, except as provided by this Act, shall be valid." Only two kinds of settlements are permitted under the Act. The first is limited to compensation payable to an employee either for permanent partial disability of a kind not specifically covered in the compensation table prescribed in Section 8 (c), or for temporary partial disability. Section 8 (i) provides that in such cases the deputy commissioner, if he determines that it is in the best interest of the employee, and subject to the approval of the Commission, may approve agreed settlements of the interested parties "notwithstanding the provisions of section 15 (b) and section 16 of this Act." In addition, under section 14 (j) "whenever the deputy commissioner determines that it is in the interest of justice," any compensation liability due under the Act may be discharged in whole or in part, "by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually."

Section 8 (i) being inapplicable in any event to death benefits, and no compliance being shown

with the provisions of Section 14 (j), either with respect to the required determination by the deputy commissioner or the calculation of the "commuted" compensation, the settlement relied upon was wholly ineffective (*cf. Lumber Mutual Casualty Ins. Co. of New York v. Locke*, 60 F. (2d) 35, 37 (C. C. A. 2); *Great Lakes Dredge & Dock Co. v. Brown*, 47 F. (2d) 265 (N. D. Ill.)) and could not afford any basis for interference with respondent's execution of his functions and powers under the Act. *Cf. Southern S. S. Co. v. Sheppard*, 34 F. (2d) 959 (S. D. Tex.). To accord it legal recognition in any way would not only conflict with the letter of the Act, but would clash with the basic legislative philosophy of requiring periodic payments in order to prevent quick dissipation of the benefits provided, to the end of minimizing the chances that beneficiaries of the Act would become public charges. See, e. g., Hearing before Subcommittee No. 3, Committee on the Judiciary, House of Representatives, 74th Cong., 1st Sess., on H. R. 8293, p. 15.

(b) The attempted withdrawal of the claim from the jurisdiction of respondent and the United States Employees' Compensation Commission was equally abortive to render the appeal moot. The Regulations issued by the Commission pursuant to its rule-making power under Section 39 of the Act require that application for withdrawal of a claim be made to the deputy commissioner, together with

a statement of the reason for the application, and direct the deputy commissioner in considering the application to "determine whether such withdrawal is for a proper purpose and for the claimant's best interest prior to authorizing such withdrawal" (Regulations Governing the Administration of the Longshoremen's and Harbor Workers' Compensation Act, Section 31.7 (20 C. F. R., § 31.1)).⁷ Particularly in view of its manifest harmony with the plain purpose of Congress to protect beneficiaries from surrendering or compromising their rights under the Act (see, e. g., Sections 15 and 16), the Regulation in question was clearly within the competence of the Commission. *Cf. Bronx Brass Co. v. Irving Trust Co.*, 297 U. S. 230; Cardozo, J., dissenting in *Jones v. Securities Commission*, 298 U. S. 1, 29, 30. Accordingly, since there is no showing that it was ever authorized by the deputy commissioner as required by the Regulations, the purported withdrawal of the claim was unavailing and did not make the case moot. *Cf. In re Barnet*, 124 F. (2d) 1005, 1013 (C. C. A. 2).

3. There is no merit in petitioners' contention that the judgment below should be reversed because the minor was not represented by a guardian

⁷ This Regulation is set out in full in Appendix B, p. 34, *infra*.

in the proceedings before respondent.* The Act clearly contemplates that proceedings upon a minor's claim may be entertained by a deputy commissioner, in his discretion, without the appointment of a guardian. Thus Section 8 (d) (3), substantially repeated in Section 9 (b), provides:

The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

And the following is provided by Section 11:

The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this Act

* Aside from the merits, it is doubtful whether this question was seasonably raised. Although petitioners' answer of September 19, 1940, admitting liability, affirmatively recognized that a minor's claim was involved (R. 28, 29), they first raised this question on May 5, 1941, when, invoking Section 22 of the Act, they applied to respondent for review of his order awarding compensation filed January 21, 1941, and his supplemental order directing payment to the Tutrix, dated April 5, 1941, on grounds of "mistake in a determination of fact by the deputy commissioner," as provided in section 22. Assuming *arguendo* that an actual mistake as to whether a claimant had attained majority would afford a cognizable ground for review under Section 22, no such mistake was made in this case. Respondent's findings, accompanying his compensation order, affirmatively recited the age of the

and to exercise the powers granted to or to perform the duties required of such person under this Act.

The only reasonable construction of this language is that the Act "permits the deputy commissioner to make awards and order them paid without guardianship". (*Maryland Casualty Co. v. Lawson*, 110 F. (2d) 269, 270 (C. C. A. 5).)⁹

Any doubt in this connection is removed by Section 33, specifying the procedure to be followed and the rights of the interested parties when a third person is liable in damages for a

claimant and specifically required the appointment of a guardian to receive the compensation on behalf of the minor, so that the adjudication of the claim in the absence of a guardian was no "mistake" and provided no basis for review under Section 22.

The lower federal courts in reviewing cases arising under the Act refuse to consider matters not raised before the deputy commissioner—the practical situation here since, as indicated above, the objection to the lack of guardian afforded no grounds for review under Section 22. *Maryland Casualty Co. v. Cardillo*, 107 F. (2d) 959, 962 (App. D. C.); *Metropolitan Casualty Ins. Co. v. Hoage*, 89 F. (2d) 798, 809 (App. D. C.); *Liberty Stevedoring Co., Inc., v. Cardillo*, 18 F. Supp. 729, 731 (E. D. N. Y.); *Southern Shipping Co. v. Lawson*, 5 F. Supp. 321, 322 (S. D. Fla.)

It is settled that questions of capacity are non-judicial and afford no ground for reversal by appellate tribunals, even if well-taken, unless raised in time to permit correction by the trial forum. *Cf. McCandless v. Furlaud*, 293 U. S. 67, 73-74; *Parker v. Motor Boat Sales*, 314 U. S. 244, 251.

⁹ Petitioners' reliance upon that decision's construction of Section 13 (c), in support of their argument that a guardian was necessary (Pet. 25-26), is thus misguided.

compensable injury. Subdivision (a) of this section provides that in such cases the person entitled to compensation may, upon notice to the deputy commissioner, elect either to receive compensation or to recover damages against the third party, and subdivision (h) provides:

The deputy commissioner may, if the person entitled to compensation is a minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election.

The language is plainly incompatible with petitioners' claim that proceedings under the Act involving a minor may not go forward without the appointment of a guardian.

Moreover, Section 33 (h) expressly recognizes that the "person entitled to compensation" may be a minor, and when read with Section 12 (b), permitting notice of a claim for death benefits to be filed "by any person claiming to be entitled to compensation for such death or by a person on his behalf," is a clear indication that the submission of a minor's claim need not be by a legal representative on his behalf. The instant claim was filed in the manner which "the administrative practice * * * countenances" on Form U. S. 262 (R. 23) and accordingly afforded a proper basis for the exercise of respondent's functions. Cf. *Parker v. Motor Boat Sales*, 314 U. S. 244, 251.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

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MAY 1943.

APPENDIX A

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U. S. C. 901, et seq., are as follows (as they appear in the code):¹⁰

§ 902. Definitions.

When used in this chapter—

* * * *

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child", "grandchild", "brother", and "sister" include only persons who are under eighteen years of age, and also persons who, though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability.

¹⁰ The section numbers of the Act as cited in the Argument, *supra*, correspond to the final two figures in the code sections.

* * * * *

§ 903. Coverage.

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any drydock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; * * *

* * *

* * *

§ 908. Compensation for disability.

* * *

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be $66\frac{2}{3}$ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability paid in accordance with subdivision (b) of this section, and shall be paid to the employee, * * *

* * *

(21) Other cases: In all other cases in this class of disability the compensation shall be $66\frac{2}{3}$ per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the dep-

uty commissioner on his own motion or upon application of any party in interest.

(d) * * *

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(i) In cases under subdivision (c) (21) and subdivision (e) of this section, whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 915 (b) and section 916 of this title: *Provided*, That the sum so agreed upon shall be payable in installments as provided in section 914 (b) of this title, which installments shall be subject to commutation under section 914 (j) of this title: *And pro-*

vided further, That if the employee should die from causes other than the injury after the Commission has approved an agreed settlement as provided for in this chapter, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section.

* * * *

§ 909. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

* * * *

(b) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 10 per centum of such wages for each such child; in case of the death or remarriage of such surviving wife or dependent husband, any surviving child of the deceased employee shall have his compensation increased to 15 per centum of such wages: *Provided*, That the total amount payable shall in no case exceed $66\frac{2}{3}$ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

§ 911. Guardian for minor or incompetent.

The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

§ 912. Notice of injury or death.

(a) Notice of an injury or death in respect of which compensation is payable under this chapter shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

* * * *

§ 913. Time for filing of claims.

(a) The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after

the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.

* * * *

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

* * * *

§ 914. Payment of compensation.

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

* * * *

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

* * * *

(h) The deputy commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

* * * *

(j) Whenever the deputy commissioner determines that it is in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Commission, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other

contingency affecting the amount or duration of the compensation shall be disregarded.

* * * * *

§ 915. Invalid agreements.

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000.

(b) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

§ 916. Assignment and exemption from claims of creditors.

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

* * * * *

§ 919. Procedure in respect of claims.

(a) Subject to the provisions of section 913 of this title a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission at any time after the first seven days of disability following any

injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail to the claimant and to the employer at the last known address of each.

* * * * *

§ 921. Review of compensation orders.

(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district court of the United States for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the

deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the district court of the United States for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title.

§ 921a. Appearance of United States district attorney for Commission or deputy commissioner.

In any court proceeding under section 921 of this title or other provisions of this

chapter, it shall be the duty of the district attorney of the United States in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the United States Employees' Compensation Commission or its deputy commissioner when either is a party to the case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal.

§ 922. Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method

as may be determined by the deputy commissioner with the approval of the Commission.

* * * *

§ 933. Compensation for injuries where third persons are liable.

(a) If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person.

* * * *

(h) The deputy commissioner may, if the person entitled to compensation under this chapter is a minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election.

* * * *

§ 939. Administration.

(a) Except as otherwise specifically provided, the United States Employees' Compensation Commission shall administer the provisions of this chapter, and for such purpose the commission is authorized (1) to make such rules and regulations; (2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil-service laws, to appoint, and, in accordance with sections 661-663, 664-673 and 674 of Title 5, to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 940 of this chapter)

and other officers and employees; and (3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this chapter. All expenditures of the commission in the administration of this chapter shall be allowed and paid as provided in section 945 of this title upon the presentation of itemized vouchers therefor approved by the commission.

* * * * *

§ 940. Deputy commissioners.

(a) The commission may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this chapter. The commission may make such arrangements as may be deemed advisable by it for the payment of expenses of such board, commission, or other agency, incurred in the administration of this chapter pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the commission.

* * * * *

(f) Neither a deputy commissioner nor any business associate of a deputy commissioner shall appear as attorney in any proceeding under this chapter, and no deputy

commissioner shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree, as determined by the common law.

APPENDIX B

Regulations governing the Administration of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (20 C. F. R. Parts 31-34), Part 31—General Administrative Provisions:

* * * *

Section 31.7 *Withdrawal of claim for compensation.* Any claimant not desiring to proceed with a claim filed in case of injury or death pursuant to said Act and the regulations in this subchapter, may apply for withdrawal of the claim to the deputy commissioner with whom filed, stating the reason for such withdrawal. The deputy commissioner whose jurisdiction has been invoked by the filing of such claim shall in consideration of such application determine whether such withdrawal is for a proper purpose and for the claimant's best interest prior to authorizing such withdrawal. Any claim so withdrawn is withdrawn without prejudice to the filing of another claim subject to the provisions relating to the limitation of time in section 13 of said Act.

